

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Friedrich Lu, Plaintiff) Civil Action No 19-11968-PBS
v)
Kevin Davis, et al, Defendants)

CROSS-MOTION TO STRIKE JUDICIAL DEFENDANTS' MOTION TO DISMISS

(1)

(a) On Nov 13, 2020 defendants chief justices of Supreme Judicial Court, Appeals Court and Trial Court of Massachusetts filed a motion to dismiss under Fed Rules Civ Proc 12 and 41(b) all without prior leave; they served the motion on Lu electronically noontime that day. Within minutes, Lu conveyed his intent to file the instant motion, under Dist Ct (D.Mass.) Local Rule 7.1, but they have not responded via their attorney.

(b) Plaintiff Friedrich Lu to clerk on Aug 21, 2020 made *Request for Default* against all defendants, under Rule 55(a), including the three judicial defendants above, on whose behalf office of state attorney general had accepted process and waived it service shortly after July 6, 2020. See Lu's Aug 21, 2020 *Return of Service on Three Judicial Defendants*.

(2) Magistrate judge Bowler has no authority to deny the request, but she did -- in the Nov 2, 2020 Report & Recommendation, whose page 32 seemed to take the position that Lu did not accomplish service of process on the judicial defendants (it is true, but it is also besides the point, as that office has accepted process on behalf of state employees and waived service, for more than a century).

(3) Next R&R 34 jumped to this order: "The AGO shall have up to and including November 6, 2020, to file an appearance on behalf of the chief justices."

(a) If Lu made no service on them, and now that Bowler J did not accept Lu's "allegation" the GO waived service, there is no basis for such an order.

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(b) Judicial defendants were in default. Bowler J has no authority to deny the request, made to clerk. "We give the Federal Rules of Civil Procedure their plain meaning." *Pavelic & LeFlore v Marvel Entertainment Group* (1989) 493 US 120, 123.

(4) These defendants did not file a motion for leave to file, with excusable neglect and meritorious defense. See *Pioneer Investment Services Co v* (1993) 507 US 380.

(5) WHEREFORE Lu moves to strike their motion to dismiss.

Plaintiff: Friedrich Lu, pro se

Date: November 16, 2020

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